

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

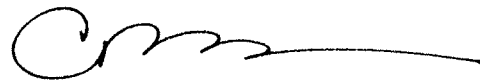
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WAYNE BERRY,	:	
	:	
	:	
Plaintiff,	:	
	:	
- against -	:	No. 07-CV-07634 (HB) (AJP)
	:	
DEUTSCHE BANK TRUST COMPANY	:	NOTICE OF MOTION TO
AMERICAS (F.A. BANKERS TRUST	:	DISMISS
COMPANY) AND JP MORGAN CHASE BANK	:	
IN THEIR SEPARATE CAPACITIES AND AS	:	
AGENTS FOR THE PRE AND POST-PETITION	:	
LENDERS OF FLEMING COMPANIES, INC.,	:	
GENERAL ELECTRIC CAPITAL	:	
CORPORATION; C&S WHOLESALE	:	
GROCERS, INC., DOES 1-20 TO 200,	:	
	:	
Defendants.	:	
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PLEASE TAKE NOTICE that, upon the Declaration of Lex R. Smith, the exhibits attached to it, and the accompanying brief, Defendant C&S Wholesale Grocers, Inc. respectfully moves this Court for an Order, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing the claims against it in this action on grounds of *res judicata*.

Dated: September 5, 2007

NIXON PEABODY LLP

By:



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